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EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 10/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n No.

09/736,408

Applicant(s)

FIELDS-BABINEAU, MIRIAM

Examiner

Kimberly S Smith

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 6-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 20 August 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The corrected or substitute drawings were received on 08/20/02. These drawings are approved.

### ***Response to Amendment***

2. Applicant's request for an issuance of a second non-final office action is not found persuasive and therefore the finality of the instant office action is maintained. The request to withdraw consideration of the Borchelt reference due to lack of utility is not found persuasive. Irrespective of any incident that occurred during the use of the Borchelt invention, the patent to Borchelt is still maintained as a teaching in the art and therefore is retained as a reference of prior art.
3. The declaration under 37 CFR 1.132 filed 08/20/02 is insufficient to overcome the rejection of claims 6-25 based upon rejections as set forth in the instant Office action because: the facts presented are not germane to the rejections at issue in the instant action.

### ***Response to Arguments***

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 6 and 17-25 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as initially filed has not disclosed that the snout loop is collapsible. This limitation should be deleted from the claims as being related to new matter.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 18 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Regarding claim 18, it is questioned as to how the first cheek strap rotates about the first and second ring. Claim 18 has been construed to mean the first cheek strap rotates about the first and third ring.

10. Regarding claim 20, it is questioned as to how the first cheek strap rotates around the first and second ring. Claim 20 has been construed to mean the first cheek strap rotates about the first and third ring.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- ✓ 12. Claims 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Borchelt et al., US Patent 5,992,352.

Borchelt discloses a collar member (20), a snout loop (50) having an unitary non-flat portion (as seen in figure 1, the snout loop has a thickness and a curved dimension and is therefore non-flat), a first and second cheek strap (40 and 30) and an under chin strap (60) connected at a first end to the collar member and at a second end to a ring wherein the lower portion of the snout loop is drawn through the ring to close the canine jaw; wherein a dog leash (70) is connected to the lower portion of the snout loop; wherein a retaining ring (64) is attached about the lower portion of the snout loop.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- ✓ 14. Claims 6, 11-14 and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt et al., US Patent 5,992,352 (Borchelt) in view of Whitman, US Patent 207,467.

Regarding claims 6 and 17, Borchelt discloses a collar member (20) forming a continuous loop, a snout loop (50) including a single lofted upper nose member and an under chin member forming a continuous loop, a first cheek strap (40), a second cheek strap (30) and an under chin strap (60) connected at a first end to the bottom strap of the collar and connected at the second end to a cinch ring (fifth ring) wherein a portion of the under chin member is drawn through the cinch ring for attachment to a dog leash (70). However, Borchelt does not disclose the collar member comprising a top strap and a bottom strap connected via a first and second metal collar ring or a snout loop wherein the upper nose member and under chin member being connected via metal loop rings. Whitman teaches within the same field of endeavor the use of a top strap connected to a bottom strap via a first and second metal collar ring and the upper nose member and the under chin member connected via a first and second metal loop ring for the purpose of effectually keeping from chafing the animal and so that the device may be adjustable to provide a better fit to the animal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of Whitman's metal connecting rings to the halter of Borchelt to reduce the possibility of chaffing and to allow for an adjustable and better fit of the halter on the animal.

Regarding claims 11-14, Borchelt discloses the invention substantially as claimed. However, Borchelt does not disclose the cheek strap being connected to the collar member by first and second metal rings or to the snout loop by respective third and fourth metal rings. Whitman teaches within the same field of endeavor the use of four metal rings to connect the cheek straps to the collar member and snout loop. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of Whitman's

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metal connecting rings to the halter of Borchelt to reduce the possibility of chaffing and to allow for an adjustable and better fit of the halter on the animal.

Regarding claim 16, Borchelt discloses the invention substantially as claimed. However Borchelt does not disclose the collar member including a top strap and bottom strap being connected by a first and second metal ring. Whitman teaches within the same field of endeavor the use of a first and second metal ring to attach the top and bottom strap to provide for an adjustable fit for the halter. It would have been obvious to one having ordinary skill in the art to apply the teaching of Whitman to the invention of Borchelt to allow for a more comfortable fit for the animal with respect to the collar member.

Regarding claim 18, Borchelt as modified discloses the first cheek strap rotates about a portion of the first ring and rotates about a portion of the third ring.

Regarding claim 19, Borchelt as modified discloses the second cheek strap rotating about a portion of the second and fourth rings.

Regarding claim 20, Borchelt as modified discloses the first cheek strap rotating about the first ring and the third ring and the second cheek strap rotating about the second ring and the fourth ring.

Regarding claim 21, Borchelt as modified discloses the upper nose member of the snout loop being an unitary non-flat member.

✓ 15. Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt as applied to claim 7 above in view of "Snoot Loop Halter for Dogs by Peter Borchelt" submitted in applicant's admitted prior art (Borchelt').

Borchelt discloses the invention substantially as claimed however it is not disclosed that the non-flat portion of the snout loop has rounded edges. Borchelt' teaches within the same art on the identical device that "a piece of felt or flannel can be wrapped in one layer around the nose loop and sewn to form a close fitting tube" in order to reduce chaffing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the upper nose loop have rounded edges (i.e. cylindrical tube) as disclosed by the "close fitting tube" of Borchelt' in order to prevent injury to the nose of the animal. It would have further been obvious to combine the cylindrical tube of Borchelt' with the snout loop of Borchelt as it has been held that forming in one piece an article which has formerly been formed in two pieces (i.e. the snout loop and the rounded tube) and put together involves only routine skill in the art.

Regarding claim 15, Borchelt as modified as per the same obviousness as applied for claim 10 discloses the inventions substantially as claimed. However, Borchelt as modified does not positively state that the snout loop is a cotton/nylon braid. It is disclosed in the Abstract of Borchelt that the various components are preferably formed of a flexible material such as a braided fabric. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the snout loop out of a cotton/nylon braid since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

16. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt et al, US Patent 5,992,352 (Borchelt) in view of Tachi et al., US Patent 4,798,174 (Tachi).



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Borchelt discloses the invention substantially as. However, Borchelt does not disclose the use of the collar member being formed from a piercible woven fabric in which the a buckle at the first end of the collar member connects the first end of the collar member to a plurality of positions along a second end of the collar by piercing through the spaces defined by weaves of the woven fabric. Tachi teaches within the analogous art of collars for pets a collar having a buckle at a first end which is adjustable to a variety of positions by piercing the woven fabric for the purpose of quickly adjusting the dimensions of the collar. It would have been obvious to one having ordinary skill in the art at the time the invention was made apply the teaching of Tachi's quick adjustable collar to the invention of Borchelt in order to allow for quick adjustment of the collar member of Borchelt's harness.

Regarding claim 23, Borchelt as modified discloses the upper nose member being a unitary non-flat member.

17. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt in view of Tachi as applied to claim 22 above, and further in view of Whitman, US Patent 207,467.

Borchelt as modified discloses the invention substantially as claimed. However Borchelt as modified does not discloses the cheek straps being connected by metal rings or the non-flat portion of the snout loop has rounded edges. Whitman teaches within the same field of endeavor the use of the cheek straps being connected to the collar member and the snout loop via rings. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of Whitman's metal connecting rings to the halter of Borchelt to reduce the possibility of chaffing and to allow for an adjustable and better fit of the halter on the animal.

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18. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt in view of Tachi as applied to claim 22 above, and in further view of “Snoot loop Halter for Dogs by Peter Borchelt” (Borchelt’).

Borchelt as modified discloses the invention substantially as claimed. However, Borchelt does not disclose the use of a rounded edge on the snout loop. Borchelt’ teaches within the same art on the identical device that “a piece of felt or flannel can be wrapped in one layer around the nose loop and sewn to form a close fitting tube” in order to reduce chaffing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the upper nose loop have rounded edges (i.e. cylindrical tube) as disclosed by the “close fitting tube” of Borchelt’ in order to prevent injury to the nose of the animal. It would have further been obvious to combine the cylindrical tube of Borchelt’ with the snout loop of Borchelt as it has been held that forming in one piece an article which has formerly been formed in two pieces (i.e. the snout loop and the rounded tube) and put together involves only routine skill in the art. It would have further been obvious to one having ordinary skill in the art to manufacture the cinch ring out of metal as it is notoriously well known in the art that fastening members for collar and harnesses are manufactured from metal and also that it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

***Conclusion***


19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703-306-4159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

  
CHARLES T. JORDAN  
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